

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

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FILE:

DATE: JUN 4 1975

B-183374

MATTER OF:

Survivor Benefit Plan coverage eligibility -  
Mrs. Helen T. O'Neill

DIGEST:

An election by a military retiree to participate in the Survivor Benefit Plan (SBP) and cancel his Retired Serviceman's Family Protection Plan (RSFPP) coverage, is of no force or effect in view of the limitation contained in 10 U.S.C. 1450(d), where he has previously waived his retired pay in order to increase his Civil Service annuity and has in effect a survivor annuity under that program, and the widow of such a member is to have her RSFPP coverage reinstated.

This action is in response to a letter dated February 7, 1975 (file reference RPTT), from Captain M. V. Starr, USAF, Headquarters Air Force Accounting and Finance Center, requesting an advance decision concerning the propriety of making payment on a voucher in the amount of \$241.22, in favor of Helen T. O'Neill, widow of Senior Master Sergeant John B. O'Neill, USAF, Retired, representing Retired Serviceman's Family Protection Plan (RSFPP) annuity payments for the period August 1, 1974, through November 30, 1974, less the cost of such an annuity for the period August 1, 1973 to August 24, 1974. The submission was forwarded here by letter dated March 3, 1975, from the Chief, Finance Group, Directorate of Accounting and Finance, and was approved by the Department of Defense Military Pay and Allowance Committee as Air Force Request No. DO-AF-1230.

The submission states that Sergeant O'Neill retired from the Air Force effective April 1, 1966, having elected options 3 and 4 under the RSFPP, 10 U.S.C. 1431-1446. Immediately after his retirement from the military, the member became a civilian employee of the Federal Government. He retired from Government service on January 30, 1973, at which time he waived his military retired pay so that his military service could be used to his increase his Civil Service annuity. The member also elected to provide survivor coverage for his spouse from his Civil Service annuity benefits.

The submission further states that on July 5, 1973, the member filed an "Election Certificate by Existing Retiree" under the Survivor Benefit Plan (SBP), which elected coverage for his

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B-183374

spouse only, at a base amount of \$300 and also requested cancellation of his coverage under the RSFPP. In accordance with his election, SBP coverage was established and his coverage under the RSFPP was cancelled. The member subsequently died on August 24, 1974.

The submission states that in light of the language contained in 10 U.S.C. 1450(d), its legislative history and our decision B-178931, May 13, 1974 (53 Comp. Gen. 857), the question is raised as to whether the member's election into the SBP on July 5, 1973, and his concurrent cancellation of the RSFPP was valid and should have been honored.

Subsection 1450(d) of title 10, U.S. Code provides as follows:

"(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title."

And subsection 1452(e) of the same title provides that:

"(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Civil Service Commission that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5."

In 53 Comp. Gen. 857 (1974), we held that under the provisions of 10 U.S.C. 1450(d), where an SBP annuity is elected by a retiree who waives military retired pay for use of military credits to increase his Civil Service retirement benefits, such an annuity is not payable unless the retiree elects not to participate in the Civil Service retirement survivorship plan; nor is it required under provisions of 10 U.S.C. 1452(e) that deposits be made under the SBP in such circumstances unless the retired member elects not to participate in the Civil Service retirement survivorship plan.

It appears from copies of documents informally obtained from the Air Force that on November 29, 1972, the member waived his military retired pay, effective December 31, 1972, for the purpose of increasing his Civil Service annuity. Further, those documents indicate that the member specifically requested survivor coverage for his wife under his Civil Service annuity program.

Based on the above information and the express language of 10 U.S.C. 1450(d) and 1452(e), prohibiting participation in the Survivor Benefit Plan by a member who has in effect a waiver of retired pay for the purpose of including his military service in the computation of his Civil Service annuity and who elects to provide a survivor annuity under the Civil Service annuity program, it is our view that Sergeant O'Neill's action to elect into the SBP and cancel his coverage under the RSFPP was without force or effect.

Accordingly, survivor coverage under the RSFPP should be reinstated in Mrs. O'Neill's case and payment made on the voucher representing the annuity in question less the cost thereof had coverage not been cancelled, if otherwise correct.

R.F. KELLER

Deputy Comptroller General  
of the United States